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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 DENNIS A. McCORNELL,  
12 CDC #B-92969,

13 Plaintiff,

14 vs.

15  
16 CRUZ, et al.,

17 Defendants.  
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Civil No. 07-0664 L (CAB)

**ORDER DISMISSING CIVIL  
ACTION AS DUPLICATIVE  
PURSUANT TO 28 U.S.C.  
§ 1915A(b)(1)**

20  
21 Plaintiff, a state inmate currently incarcerated at Corcoran State Prison located in  
22 Corcoran, California and proceeding pro se, filed a civil rights Complaint pursuant to 42 U.S.C.  
23 § 1983. While Plaintiff's Complaint is not entirely clear, it appears that Plaintiff alleges that  
24 prison officials from Richard J. Donovan Correctional Facility in San Diego, California violated  
25 his constitutional rights when they determined he was "HIV" positive but participated in a  
26 conspiracy to "cover up" Plaintiff's medical status.

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1 **I. Sua Sponte Screening Pursuant to 28 U.S.C. § 1915A(b)**

2 The Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915A, obligates the Court to  
 3 review complaints filed by anyone “incarcerated or detained in any facility who is accused of,  
 4 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions  
 5 of parole, probation, pretrial release, or diversionary program,” “as soon as practicable after  
 6 docketing” and regardless of whether the prisoner prepays filing fees or moves to proceed IFP.  
 7 See 28 U.S.C. § 1915A(a), (c). The Court must sua sponte dismiss prisoner complaints, or any  
 8 portions thereof, which are frivolous, malicious, or fail to state a claim upon which relief may  
 9 be granted. 28 U.S.C. § 1915A(b); *Resnick v. Hayes*, 213 F.3d 443, 446-47 (9th Cir. 2000).

10 Plaintiff’s instant Complaint is subject to sua sponte dismissal pursuant to 28 U.S.C.  
 11 § 1915A(b)(1) because it appears to be duplicative of a civil rights action he is already litigating.  
 12 Plaintiff’s Complaint contains identical defendants and claims that are found in *McCornell v.*  
 13 *Cruz, et al.*, S.D. Cal. Civil Case No. 07cv0199 L (LSP). A court “may take notice of  
 14 proceedings in other courts, both within and without the federal judicial system, if those  
 15 proceedings have a direct relation to matters at issue.” *United States ex rel. Robinson Rancheria*  
 16 *Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

17 A prisoner’s complaint is considered frivolous under 28 U.S.C. § 1915A(b)(1) if it  
 18 “merely repeats pending or previously litigated claims.” *Cato v. United States*, 70 F.3d 1103,  
 19 1105 n.2 (9th Cir. 1995) (construing former 28 U.S.C. § 1915(d)) (citations and internal  
 20 quotations omitted). Because Plaintiff is already litigating the same claims presented in the  
 21 instant action in *McCornell v. Cruz, et al.*, S.D. Cal. Civil Case No. 07cv0199 L (LSP), the Court  
 22 hereby **DISMISSES** Civil Case No. 07cv0664 L (CAB) pursuant to 28 U.S.C. § 1915A(b)(1).  
 23 See *Cato*, 70 F.3d at 1105 n.2; *Resnick*, 213 F.3d at 446 n.1.

24 **II. Conclusion and Order**

25 Good cause appearing, **IT IS HEREBY ORDERED** that:

26 Plaintiff’s Complaint in Civil Case No. 07cv0664 L (LSP) is **DISMISSED** as frivolous  
 27 pursuant to 28 U.S.C. § 1915A(b)(1).


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1 This dismissal shall operate without prejudice to Plaintiff's pursuit of the same claims  
2 presented herein in *McCornell v. Cruz, et al.*, S.D. Cal. Civil Case No. 07cv0199 L (LSP).

3 The Clerk shall close the file.

4 **IT IS SO ORDERED.**

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6 DATED: April 25, 2007

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8 M. James Lorenz  
9 United States District Court Judge  
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